

## The Main Line Times

### Friends, Montco file Barnes' briefs; oral arguments next

by Cheryl Allison

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Meeting a deadline Feb. 29, the Friends of the Barnes Foundation and Montgomery County each filed briefs asking Orphan's Court Judge Stanley Ott to set aside objections raised by the world-renowned art gallery and the Pennsylvania Attorney General's Office and reopen the case of its proposed move from Merion to Philadelphia. Oral arguments in the matter are scheduled to begin in Norristown March 24.

The first major document filed by the Friends' new attorney, Eric Spade, is less concerned with the personalities on the Barnes Foundation board and among the major Philadelphia philanthropic entities backing the move of the priceless art collection than the group's original petition to the court last August, filed by its outspoken former legal counsel, Mark Schwartz.

Like the county's brief, it focuses closely on three "changes in circumstances" that it argues the judge should consider.

First, Montgomery County's offer of a \$50 million sale and leaseback proposal for the foundation's Merion campus and KerFeal estate in Chester County.

Second, Lower Merion Township's action last July to amend its zoning ordinance to permit greater attendance in Merion.

Finally, an investigation funded by the Friends group last year determined that the Merion campus is eligible for National Landmark status, a designation that could make it eligible for additional federal and other grant funds.

Taken together, the Friends and the county maintain, the new circumstances would permit the financially-troubled foundation to keep the art in the gallery founder and collector Dr. Albert C. Barnes built for it, and where his will made it clear he wanted it always to remain.

The briefs point out that Ott's controversial decision in December 2004 to permit the move to a new museum in Philadelphia was based on his finding that the removal was "the least drastic modification" of Barnes's will that "could accomplish [his] desired ends."

"At the present time, a long-term solution to the Barnes Foundation's financial difficulties exists that does not entail either disregarding the donor's express intention that the artwork and art school should remain in Merion or constructing a museum in Philadelphia ...," the Friends' brief states.

"This court's intervention is once again required to ensure that these two significant ... changes in circumstances that have just arisen are not improperly disregarded by the Barnes Foundation's leadership in their single-minded efforts to transform the Barnes Foundation into something that its creator never intended nor would have authorized," it goes on to say.

In earlier preliminary objections to the Friends' and county's petitions, attorneys for the Barnes Foundation have argued that neither party has standing to seek a reopening of the case.

They have also argued that preparations for the move - architects have been selected; a new site on the Benjamin Franklin Parkway has been secured - are too far along to change course now.

But the Friends' and county's filings suggest that there is a critical decision for Ott to make. He must either "hold that [the 2004 ruling] relieves the Barnes Foundation's leadership from any obligation to adhere to the donor's intent," or find that the decision "only continues to authorize a move ... for so long as it remains financially infeasible for the artwork and art school to remain in Merion."

The Friends' petition and the Barnes Foundation's objections make much of the presence in a 2002 state capital budget of a line item of \$107 million for a new Barnes museum in the city. Information about that potential state funding was never presented to Ott during the 2004 court proceedings.

The Barnes Foundation's attorneys have asked that references to the funding in the petitions be stricken as "scandalous and impertinent matter." In their objections, they have suggested that if the existence of the \$107 million had been known in 2004, it would only have served to reinforce the foundation's position that a move was necessary to its survival.

According to the Friends' brief, however, "At a minimum, this court could then have inquired into whether the Pennsylvania legislature's newfound support or the Barnes Foundation was capable of translating into any funding to keep the artwork and art school in Merion."

The Barnes Foundation and the Attorney General have until March 20 to file responses to the briefs.

Barring changes, however, the Barnes case is due for its first significant court hearing since 2004 on March 24.